

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

CASE NO. S-2524

PETITION OF TWO GOSHEN OAKS CENTER, LLC AND 7-ELEVEN, INC.

OPINION OF THE BOARD

(Public Hearing Dates: October 14, 2002, December 6, 2002)
(Effective Date of Opinion: March 13, 2003)

Case No. S-2524 is an application for a special exception pursuant to Section 59-G-2.06 (Automobile Filling Stations) of the Zoning Ordinance to permit the construction and operation of an automobile filling station. The petitioner proposes to: (1) install five multi-product dispenser islands with two pumping stations at each island; (2) install a 128 x 24 foot canopy; (3) install a CITGO gas pricing sign adjacent to the existing 7-Eleven sign; and (4) operate the station twenty-four hours daily with existing staff.

Pursuant to the authority contained in Section 59-A-4.125 of the Montgomery County Code, the Board of Appeals referred the application to the Hearing Examiner for Montgomery County to conduct a public hearing. The Hearing Examiner held hearings on October 14, 2002 and December 6, 2002. The record in the case closed on February 8, 2003, and on February 19, 2003, the Hearing Examiner issued a Report and Recommendation for approval of the special exception. On February 24, 2003, the Board received a letter from Dennis Barnes of the North Village Homes Corporation, requesting oral argument on the Report and Recommendation. The Board also received a letter, dated February 28, 2003, from Barbara Sears, Esquire, opposing the request for Oral Argument.

The subject property is Parcel N873, Goshen Oaks Center Subdivision, located at 9051 Snouffer School Road, Gaithersburg, Maryland, in the Town Sector Zone.

Decision of the Board: Special Exception **granted**, subject
to conditions enumerated below.

The Board of Appeals considered the Report and Recommendation, together with the request for oral argument, at its Worksession on March 5, 2003. The Board finds that the issues raised in the request for oral argument were fully

addressed in the application and public hearing process. The Board agrees with and adopts the Hearing Examiner's finding regarding a need for the automobile filling station for the purposes of Section 59-G-1.24 of the Zoning Ordinance. The Board further finds that the Applicant's proposed vapor recovery system fulfills the requirements in Sections 59-G-1.21(a)(6) and 59-G-2.06(a)(1) of the Code that the use not create objectionable fumes, and that the Hearing Examiner addressed this in his report. The Board finds that the Applicant's revisions to the canopy, together with the proposed use of non-reflective material under the canopy fulfill the requirement in Section 59-G-1.21(a)(6) that the use not cause objectionable glare. Therefore,

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman in agreement the Board voted to **deny** the request for Oral Argument; and

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, the Board voted to adopt the Hearing Examiner's Report and Recommendation and grant the special exception, subject to the following conditions:

1. Petitioner shall be bound by its testimony and exhibits of record, including, but not limited to Exhibit Nos. 4, 5, 7, 59(a), 59(c) and 83(a)-(j), the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.
2. There will be no delivery of fuel to the filling station between the hours of 11:00 p.m. and 7:00 a.m.
3. The area under the canopy will be constructed of non-reflective concrete.
4. All evergreen plantings and understory shown on the landscaping plan (Exhibit 5) shall be installed and maintained.
5. Except as required for disabled customers or for customers to communicate with employees about emergencies, intercom boxes and external speakers are prohibited.
6. Petitioners shall provide and maintain pedestrian crossing stripes at the entry drive to Snouffer School Road to connect to the steps leading to the adjacent townhouse development.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of March, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.